



Under the Civil Service Reform Act of 1978 (“CSRA”), the Federal Circuit Court of Appeals has exclusive jurisdiction over Plaintiffs’ constitutional challenges to 5 U.S.C. § 3328, the statute barring their federal employment for failure to register with the Selective Service System, and Plaintiffs failed to exhaust their remedies under the CSRA, a jurisdictional prerequisite to any suit;

2. The statute at issue here is not a bill of attainder because (a) it is prospective in nature and, at the time Congress passed 5 U.S.C. § 3328, the statute did not punish *anyone* for past conduct; and (b) under the CSRA’s comprehensive remedial scheme, there is a provision for judicial review of Plaintiffs’ claims.

As grounds for this motion, Defendants rely on the accompanying memorandum of law.

WHEREFORE, Defendants respectfully request that the Court reconsider its January 26, 2009 Memorandum and Order finding that 5 U.S.C. § 3328 is an unconstitutional bill of attainder and dismiss Plaintiffs’ claims in their entirety.<sup>3</sup>

Respectfully submitted,

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jurisdiction, the court must dismiss the action”) (emphasis added); American Fiber & Finishing, Inc. v. Tyco Healthcare Group, LP, 362 F.3d 136, 138-39 (1st Cir. 2004) (noting that challenges to federal subject matter jurisdiction may be raised for the first time on appeal). Defendants regret their error in not raising this jurisdictional argument in their motion to dismiss; they raise it now because they believe this Court does not have subject matter jurisdiction and, therefore, for the reasons discussed in the accompanying memorandum of law, should dismiss this action.

<sup>3</sup> In the alternative, because this Court lacks subject matter jurisdiction, Defendants request that the Court transfer this case to the United States Court of Appeals for the Federal Circuit, pursuant to 5 U.S.C. § 7703(b)(1).

**LOCAL RULE 7.1(A)(2) CERTIFICATION**

The parties cannot narrow the issues presented in this motion and agreed on a briefing schedule for Defendants' motion, Plaintiffs' response, and Defendants' reply in advance of the February 6, 2009 status conference in this matter. The Court allowed the parties' proposed briefing schedule.

/s/ Jennifer A. Serafyn

Jennifer A. Serafyn

Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on April 3, 2009.

/s/ Jennifer A. Serafyn

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Assistant U.S. Attorney